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Attorneys for Plaintiff Global IP Solutions, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
GLOBAL IP SOLUTIONS, INC.	:	07 CV 7631 (RJH)
	:	
Plaintiff,	:	:
	:	
-against-	:	
	:	
DELTATHREE, INC.	:	
	:	
Defendant.	:	
-----	X	

**DECLARATION OF JONATHAN M. COHEN IN SUPPORT OF  
PLAINTIFF'S MOTION TO STRIKE SHIMY ZIMELS'S DECLARATION AND OF  
PLAINTIFF'S OPPOSITION TO DEFENDANT DELTATHREE, INC.'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Jonathan M. Cohen, declare the following:

1. I am an attorney duly admitted to practice law in the State of California, am a partner at the law firm Winston & Strawn LLP (“Winston & Strawn”), and am admitted to the Southern District of New York for the purposes of representing Plaintiff Global IP Solutions, Inc. (“GIPS”) in this case.

2. I have personal knowledge of the facts set forth below, and if called upon to testify, I could and would competently testify to them. I make this declaration in support of GIPS’s Opposition to Defendant Deltathree’s Motion for Partial Summary Judgment and in support of GIPS’s Motion to Strike Shimmy Zimels’s Declaration or, in the Alternative, Disregard It.

3. Attached hereto as Exhibit A is a true and correct copy of the Court’s August 28, 2007 Order directing the parties to meet and confer about what data Deltathree will report weekly to GIPS during the pendency of GIPS’s preliminary injunction motion.

4. Attached hereto as Exhibit B is a true and correct copy of the Court-endorsed letter prepared by my office, which sets forth the data Deltathree would report weekly to GIPS during the pendency of GIPS’s preliminary injunction motion.

5. For each week starting with the week of August 27, 2007 and ending with the week of November 16, 2007, Deltathree’s counsel reported to me the number of new accounts using GIPS’s software. From August 27, 2007 to November 5, 2007, there were approximately 170,000 new accounts using GIPS’s software. Of this number, approximately 84,000 new accounts using GIPS’s software were from the third quarter of 2007.

6. After the close of the third quarter of 2007, Deltathree sent to GIPS a royalty report for the third quarter of 2007. Attached as Exhibit C is a true and correct copy of that royalty report. It reported 23,912 users for the third quarter of 2007 and 23,911 users for the second quarter of 2007. Based on my understanding of Deltathree's position of how to calculate royalties, to determine royalties owed, Deltathree would calculate subtract 23,911 (the number of users for the second quarter of 2007) from 23,912 (the number of users for the third quarter of 2007) and then multiply that number (1) by \$1.00, *i.e.*, that Deltathree owes GIPS \$1.00 in royalties for the third quarter of 2007.


7. On February 12, 2008, Deltathree's counsel produced to me via email bates-labeled version of the documents comprising Exhibit C to the Declaration of Shimmy Zimels. Each page of this production was marked Confidential.

8. In its first production, Deltathree produced a bates-labeled version of the July 25, 2007 letter that is Exhibit E to the Declaration of Shimmy Zimels. Each page of the bates-labeled version is marked Confidential.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 9, 2008.

By:

  
\_\_\_\_\_  
Jonathan M. Cohen

# EXHIBIT A

Howell J

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Attorneys for Plaintiff Global IP Solutions, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
	:	
GLOBAL IP SOLUTIONS, INC.	:	07-CV-7631 (RJH)
	:	
Plaintiff,	:	
	:	
-against-	:	<b>ORDER TO SHOW CAUSE</b>
	:	<b>FOR PRELIMINARY</b>
	:	<b>INJUNCTION AND</b>
DELTATHREE, INC.	:	<b>TEMPORARY</b>
	:	<b>RESTRAINING ORDER</b>
	:	
Defendant.	:	
	:	
-----	X	

Upon the Declarations of Global IP Solutions, Inc.'s employees Edward M.

Abbatti, Jan Levin, Michael P. Poppler, and Jeff Zeichick, all sworn to the 27<sup>th</sup> day of August 2007, and the Plaintiff's Memorandum of Law in Support of its Motion for Preliminary

Injunction, and upon the copy of the Complaint annexed hereto annexed, it is

ORDERED, that the above named defendant show cause before ~~a motion term~~ <sup>Honorable Richard J. Howell</sup> of

this Court, at Room 17B, United States Courthouse, 500 Pearl Street, in the City, County of New York, on September 17, 2007, at 4 o'clock in the ~~after~~ <sup>after</sup> noon thereof, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65

of the Federal Rules of Civil Procedure enjoining the Defendant during the pendency of this action from using the technology described in the Declaration of Edward M. Abbatti and the OEM Licensing and Distribution Agreement attached as Exhibit A to the Complaint; and it is further

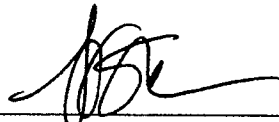
ORDERED that, sufficient reason having been shown therefor, pending the hearing of Plaintiff's application for a preliminary injunction, pursuant to Rule 65, Fed. R. Civ. P., the Defendant is temporarily restrained and enjoined from using the technology described in the Declaration of Edward M. Abbatti and the OEM Licensing and Distribution Agreement attached as Exhibit A to the Complaint; and it is further

ORDERED that security in the amount of \$ \_\_\_\_\_ be posted by the Plaintiff prior to \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day; and it is further

ORDERED that personal service of a copy of this order and annexed affidavit upon the Defendant or his counsel on or before 5 o'clock in the ~~after~~ <sup>after</sup> noon, ~~September 28~~ <sup>August 28</sup>, 2007, shall be deemed good and sufficient service thereof; and it is further

DATED: New York, New York

ISSUED: 8/28/07



United States District Judge **PART I**  
LAURA TAYLOR SWAIN



*for* ORDERED, that any opposition paper shall be filed with the Court, with a courtesy copy provided for Judge Holwell's chambers, and served on Plaintiff's counsel so as to be received by 4:00 pm on September 10, 2007; and it is further

ORDERED, that any reply paper shall be filed with the Court, with a courtesy copy provided for Judge Holwell's chambers, and served on Defendant's counsel so as to be received by 4:00 pm on September 13, 2007; and it is further

ORDERED, that discovery shall proceed on an expedited basis as necessary in advance of the hearing; and it is further

ORDERED, that the parties shall make a submission to the Part I judge by August 29, 2007 with respect to the content of a reporting requirement as to newly enrolled customers pending the determination of the preliminary injunction motion.

# EXHIBIT B



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WASHINGTON, D.C. 20006-3817

WRITER'S DIRECT DIAL  
(212) 294-6667

**MEMO ENDORSED**

August 29, 2007

### VIA FACSIMILE

Hon. Laura T. Swain  
United States Courthouse  
500 Pearl Street, Room 755  
New York, New York 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: AUG 30 2007

Re: Global IP Solutions, Inc. v. deltathree, Inc., Civil Action No.: 07 CV  
7631 (R/JH) (S.D.N.Y., filed August 28, 2007).

Dear Judge Swain:

We represent Global IP Solutions, Inc. ("GIPS"), the plaintiff in the above-referenced matter. We write in accordance with the August 28, 2007 order for the parties to provide the Court with language for a temporary restraining order that requires the defendant, deltathree, Inc., to report new users to GIPS on a weekly basis pending the determination of GIPS's preliminary injunction motion.

In reference to and incorporating the remainder of the Order of the Court deciding GIPS's application for a temporary restraining order on August 28, 2007, the parties have agreed on the following language:

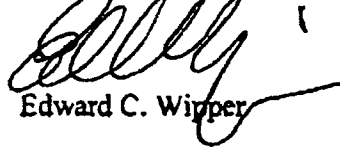
It is hereby ORDERED that pending determination of the preliminary injunction motion, brought by Order To Show Cause, dated August 28, 2007, deltathree will provide to GIPS by Monday of each week, beginning on Monday, September 10, 2007, a weekly report of all (1) new accounts utilizing GIPS software on or after Monday, September 3, 2007, and (2) new I.P. addresses registering directly through deltathree or a through reseller of deltathree utilizing GIPS software, on or after Monday, September 3, 2007.

**WINSTON & STRAWN LLP**

Hon. Laura T. Swain  
August 29, 2007  
Page 2

The parties are available for a conference, by telephone or in person, at the Court's convenience, to resolve any other issues or to answer questions.

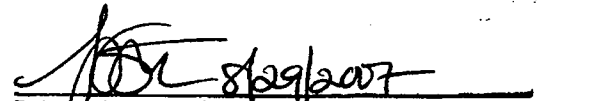
Respectfully submitted,

  
Edward C. Wipper

cc: Dominic J. Picca (via facsimile and Federal Express)

The foregoing language is  
approved and adopted.

SO ORDERED.

  
LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE Part I

# EXHIBIT C

**GIPS royalty report for Q3 2007**

	<b>Q1 2006</b>	<b>Q2 2006</b>	<b>Q3 2006</b>	<b>Q4 2006</b>	<b>Q1 2007</b>	<b>Q2 2007</b>	<b>Q3 2007</b>
<b>Consumer Group</b>	<b>8,195</b>	<b>9,580</b>	<b>10,050</b>	<b>9,792</b>	<b>9,774</b>	<b>9,240</b>	<b>8,398</b>
<b>Reseller Group</b>	<b>13,704</b>	<b>15,420</b>	<b>10,873</b>	<b>12,071</b>	<b>12,721</b>	<b>14,184</b>	<b>14,144</b>
<b>Platform</b>	<b>1</b>	<b>338</b>	<b>782</b>	<b>693</b>	<b>641</b>	<b>487</b>	<b>479</b>
<b>Total</b>	<b>21,901</b>	<b>25,338</b>	<b>21,705</b>	<b>22,555</b>	<b>23,135</b>	<b>23,911</b>	<b>23,912</b>